

that all the components of the detergent formulation "can be simply stirred together to produce a homogeneous slurry," as opposed to certain components being added to a substrate independent of other components.). Accordingly, no new matter is believed to have been added by the amendments.

II. Rejection Under 35 U.S.C. §103(a)

A. The Examiner has rejected claims 26-31, 34, 36, 37, 40, 41, 48, 50, 52, and 53 under §103(a) as being unpatentable over U.S. Patent No. 4,938,888 to Kiefer et al. ("Kiefer") in view of U.S. Patent No. 4,953,250 to Brown ("Brown"). Applicants respectfully traverse this rejection for at least the following reasons.

Claim 26 recites, in part, a process for producing a laundry detergent article comprising, preparing a detergent formulation comprising a slurry, the slurry comprising amphoteric, nonionic or anionic surfactants, and a builder, wherein the slurry has a viscosity in a range that permits coating a substrate, and applying, in a single step process, the detergent formulation to a needlepunched, nonwoven substrate. Kiefer does not teach at least two elements of claim 26 - those elements underlined above. In fact, Kiefer teaches away from the claimed invention by teaching a fundamentally different process that incorporates a different type of substrate.

For example, unlike a process that uses a needle punched fabric substrate as claimed, Kiefer describes using "adhesively bonded" substrates. See, e.g., paragraph bridging cols. 4-5. In addition, unlike the process now claimed, Kiefer describes using

the adhesively bonded substrate in a process that coats the substrate using two distinct steps. See, col. 6, lines 36-65 ("Coating of the substrate sheet was accomplished in two stages. . . After the cationic coating step was completed, the detergent composition was coated onto the non-woven substrate.")

Brown does not remedy the deficiencies in Kiefer. At best, Brown discloses a disposable wash mitt that can be made of a needle-punched fabric and is coated on one side with a detergent material. Brown does not teach a process for producing a laundry detergent article comprising preparing a detergent formulation having the claimed slurry, much less applying, in a single step process, the detergent formulation to a substrate, as claimed. Brown cannot remedy the deficiencies in Kiefer regarding the single step process, because any modification of Kiefer to arrive at the claimed invention would necessarily contravene the express teachings of Kiefer, which requires coating to be "accomplished in two stages." Kiefer at col. 6, lines 36-37. It is well-established that it is improper to combine references if their combination would result in the destruction of the intended operation or if a reference teaches away from the claimed invention. See, *In re Laskowski*, 10 USPQ 2d 1397 (Fed. Cir. 1989). For this reason, the rejection over Kiefer and Brown is improper and should be withdrawn.

Furthermore, in view of the deficiencies in the cited prior art, one can objectively conclude that the Examiner's rejection is based on what is an "obvious to try" standard.

In moving from the prior art to the claimed invention, however, one cannot base a determination of obviousness on what the skilled person might try or find obvious *to try*.

Rather, the proper test requires determining what the prior art would have led the skilled person *to do*. The Federal Circuit has given some examples of what would constitute an "obvious to try" modification based on the prior art. See *In re O'Farrell*, 853 F.2d 894, 7 U.S.P.Q.2d 1673 (Fed. Cir. 1988). For example, what was 'obvious to try' was to explore a new technology or general approach that seemed to be a promising field of experimentation, where the prior art gave only general guidance as to the particular form of the claimed invention or how to achieve it." *Id.* at 903, U.S.P.Q.2d at 1681 (citations omitted).

Brown may give general guidance as to a disposable wash mitt with detergent but it does not provide the requisite motivation to combine it with the teaching of Kiefer. Moreover, it would not have been obvious to one with the cited references before him to have tried to modify the two step process of Kiefer performed on an adhesively bonded substrate to arrive at the claimed method. Thus, at best, the prior art may make it "obvious to try" to modify the process taught in Kiefer by using a needle-punched fabric, as allegedly suggested by Brown, to arrive at the claimed invention, but such an obvious to try standard does not support a rejection under section 103.

Ecolochem, Inc. v. Southern Cal. Edison Co., 227 F.3d 1361, 1374, 56 USPQ 2d 1065, 1075 (Fed. Cir. 2000).

For at least these reasons, the rejection over Kiefer and Brown is improper and should be withdrawn.

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B. The Examiner has rejected claims 32, 33, 35-38, 42, 44-46, and 51 under §103(a) as being unpatentable over Kiefer in view of Brown, as applied to claims 26-31, 34, 36, 37, 40, 41, 48, 50, 52, and 53 above, and further in view of U.S. Patent No. 4,170,565 to Flesher ("Flesher").¹ Applicants respectfully traverse this rejection for at least the following reasons.

In addition to the deficiencies discussed above, the Examiner recognizes that Kiefer and Brown do not teach or suggest the inclusions of additional components, including the claimed surfactants, in the claimed process. Flesher does not remedy these deficiencies because Flesher does not teach the use of a needle-punched substrate material. Moreover, in addressing substrate materials for use in the articles of the present invention, Flesher explicitly discourages a needle-punched fabric stating that it is desirable that the substrate materials meet the air permeability criteria without slits. See Col. 6, lines 50-54 (emphasis added). As one skilled in the art would associate slits with the process of making a needle-punched substrate, the Flesher reference teaches away from the claimed invention.

In addition, the substrate layer of Flesher never has a "dry hand," as claimed. Rather, a dry hand is accomplished in the Flesher construct by the addition of a layer on top of the detergent layer, a fundamentally different concept than that claimed, e.g., the Flesher invention relies on a multi-ply structure where the surface-active composition is on or between plies of substrate material, not within the substrate

¹ In the Office Action the Examiner mistakenly referenced the Flesher patent as U.S. Patent No.

material itself. For example, Flesher states, in the "Summary of the Invention," that the invention consists essentially of "a water-soluble surface-active agent contained between two layers of [substrate material]." Col. 2, lines 57-63.

Furthermore, Flesher discourages using a substrate material that absorbs surface-active component, stating that substrate materials should be chosen to "minimize the bleeding of the [surface-active component] through the substrate." Col. 5, lines 11-21. Thus, while Flesher may teach that the substrate material can be dense or open, Flesher teaches away from a substrate material with perforations and the ability to absorb the surface-active composition through the material. Therefore, Flesher does not remedy the deficiencies in Kiefer and Brown in that it teaches a fundamentally different detergent sheet from that claimed, whether or not it suggests the inclusion of additional components, as asserted by the Examiner.

For at least these reasons, the rejection over Kiefer in view of Brown and Flesher is improper and should be withdrawn.

C. The Examiner has rejected claims 47 and 49 under §103(a) as being unpatentable over Kiefer in view of Brown and Flesher, as applied to claims 32, 33, 35-38, 42, 44-46, and 51 above, and further in view of U.S. Patent No. 4,113,630 to Hagner et al. ("Hagner"). In addition to the above deficiencies, the Examiner recognizes that Flesher does not teach that the quaternary ammonium compound

4,170,650, rather than the correct number of 4,170,565.

should contain at least one polyethoxy or polypropoxy side chain sufficient to keep a 1% solution of the quaternary ammonium compounds soluble in water at approximately 25°C. According to the Examiner, Hagner teaches solubility of a quaternary ammonium compounds cures this deficiency. Applicants respectfully disagree and traverse this rejection.

Hagner is substantially similar to the prior references, and thus does not remedy the above-detailed deficiencies. For example, Hagner, like Kiefer, is directed to a laundry article in which the substrate comprises adhesively bonded multi-ply layers, as opposed to a needle-punched fabric. Col. 4, lines 30-59.

Furthermore, the substrate layer of Hagner is similar to Flesher in that the "dry hand," as claimed, is accomplished in the Hagner construct by the addition of a layer on top of the detergent layer, a fundamentally different concept than that claimed, e.g., the Hagner invention relies on a multi-ply structure where the surface-active composition is on or between plies of substrate material, not within the substrate material itself. Col. 14, lines 1-8. See also, Examples I and III, teaching that the detergent composition is applied between layers of a substrate (Example I, col. 16, lines 41-50 and Example III, col. 19, lines 33-55).

The above-described differences between the substrate and its construct in Hagner and the claimed invention further leads to a fundamentally different process than that claimed. As shown in Example II, for example, Hagner teaches that the detergent composition can take the form of an "anhydrous paste" that is "thinly spread

over the surface of one side of the substrate,” as opposed to a detergent formulation comprising a slurry having a viscosity in a range that permits coating a substrate. Col. 18, lines 56-60.

Because the Examiner has not made a *prima facie* case of obviousness against claims 26 and 32 for the reasons discussed above, the rejection of claims 47 and 49 which are dependent on claims 26 and 32, also should be withdrawn.

D. The Examiner has rejected claim 39 under §103(a) as being unpatentable over Kiefer in view of Brown and Flesher, as applied to claims 32, 33, 35-38, 42, 44-46, and 51 above, and further in view of U.S. Patent No. 5,196,139 to Moschner (“Moschner”). The Examiner acknowledges that Flesher does not teach the claimed brightener, but relies on Moschner for that teaching. However, Moschner is not drawn to a process for producing a laundry detergent article comprising, preparing a detergent formulation comprising a slurry having a viscosity in a range that permits coating a substrate, and applying, in a single step process, the detergent formulation to a needlepunched, nonwoven substrate which offers a dry hand. The Examiner has not offered any suggestion present in the references, or known to one of ordinary skill in the art, that would motivate one of ordinary skill in the art to use the claimed process.

Accordingly, the rejection under 35 U.S.C. §103(a) should be withdrawn.

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E. The Examiner has rejected claim 43 under §103(a) as being unpatentable over Kiefer in view of Brown and Flesher, as applied to claims 32, 33, 35-38, 42, 44-46, and 51 above, and further in view of U.S. Patent No. 5,298,249 to Hani ("Hani"). The Examiner acknowledges that Flesher does not teach the claimed process, further comprising employing a sodium omadine biocide. The Examiner relies upon Hani for the disclosure relating to the claimed biocide. However, Hani is not drawn to detergent-containing laundry sheets, and in that sense is non-analogous art. Not surprisingly, Hani also does not disclose a process for making a laundry sheet having a needle punched substrate combined with surfactant drying down to a dry finish.

III. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of the application and timely allowance of the pending claims. Please grant any necessary extensions of time required to enter this response and charge any additional required fees to our deposit account no. 06-0916.

Respectfully submitted,

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**Amended Claims With Markings to Show Changes Made
By Preliminary Amendment of August 20, 2002**

IN THE CLAIMS:

26. (Twice Amended) A process for producing a laundry detergent article comprising:

a) preparing a detergent formulation comprising a slurry, said slurry comprising amphoteric, nonionic or anionic surfactants, and a builder, wherein said slurry has a viscosity in a range that permits coating a substrate;

b) applying, in a single step process, said detergent formulation to a needlepunched, nonwoven substrate comprising fibers having a melting point of approximately 300°F or greater; and

c) drying said detergent formulation and substrate until it forms said laundry detergent article that is dry to the touch and which does not substantially transfer detergent to other surfaces or to the skin when handled.